

BEFORE THE
BOARD FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation against:

CLARENCE MORRIS BUTLER
6 Windjammer Court
Long Beach, CA 90803-4321

Land Surveyor License No. L 4184,

Respondent.

Case No. 802-A

DECISION

The attached Stipulated Surrender of License and Order is hereby adopted by the Board for Professional Engineers and Land Surveyors as its Decision in the above-entitled matter.

This Decision shall become effective on December 15, 2006.

IT IS SO ORDERED November 16, 2006.

BOARD FOR PROFESSIONAL ENGINEERS
AND LAND SURVEYORS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

BY Original Signed

1 BILL LOCKYER, Attorney General
of the State of California
2 MARGARET A. LAFKO
Supervising Deputy Attorney General
3 JAMES M. LEDAKIS, State Bar No. 132645,
Deputy Attorney General
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9 Attorneys for Complainant

10
11 **BEFORE THE**
BOARD FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS
12 **DEPARTMENT OF CONSUMER AFFAIRS**
13 **STATE OF CALIFORNIA**

14 In the Matter of the Accusation Against:

Case No. 802-A

15 CLARENCE MORRIS BUTLER
6 Windjammer Court,
16 Long Beach, CA 90803-4321

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

17 Land Surveyor No. L 4184

18
19 Respondent.

20 IT IS HEREBY STIPULATED AND AGREED by and between the parties in this
21 proceeding that the following matters are true:

22 **PARTIES**

23 1. Cindi Christenson, P.E. (Complainant) is the Executive Officer of the
24 Board for Professional Engineers and Land Surveyors. She brought this action solely in her
25 official capacity and is represented in this matter by Bill Lockyer, Attorney General of the State
26 of California, by James M. Ledakis, Deputy Attorney General.

27 2. Clarence Morris Butler (Respondent) is representing himself in this
28 proceeding and has chosen not to exercise his right to be represented by counsel.

1 3. On or about June 12, 1974, the Board for Professional Engineers and Land
2 Surveyors issued Land Surveyor License No. L 4184 to Clarence Morris Butler (Respondent).
3 The Land Surveyor license was in full force and effect at all times relevant to the charges brought
4 in Accusation No. 802-A. Said license will expire on June 30, 2006, unless renewed.

5 **JURISDICTION**

6 4. Accusation No. 802-A was filed before the Director, and is currently
7 pending against Respondent. The Accusation and all other statutorily required documents were
8 properly served on Respondent on September 26, 2006. Respondent timely filed his Notice of
9 Defense contesting the Accusation. A copy of Accusation No. 802-A is attached as exhibit A
10 and incorporated herein by reference.

11 **ADVISEMENT AND WAIVERS**

12 5. Respondent has carefully read, and understands the charges and allegations
13 in Accusation No. 802-A.. Respondent also has carefully read, and understands the effects of
14 this Stipulated Surrender of License and Order.

15 6. Respondent is fully aware of his legal rights in this matter, including the
16 right to a hearing on the charges and allegations in the Accusation; the right to be represented by
17 counsel, at his own expense; the right to confront and cross-examine the witnesses against him;
18 the right to present evidence and to testify on his own behalf; the right to the issuance of
19 subpoenas to compel the attendance of witnesses and the production of documents; the right to
20 reconsideration and court review of an adverse decision; and all other rights accorded by the
21 California Administrative Procedure Act and other applicable laws.

22 7. Respondent voluntarily, knowingly, and intelligently waives and gives up
23 each and every right set forth above.

24 **CULPABILITY**

25 8. Respondent understands that the charges and allegations in Accusation No.
26 802-A, if proven at a hearing, constitute cause for imposing discipline upon his Land Surveyor's
27 license.

1 9. For the purpose of resolving the Accusation without the expense and
2 uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could
3 establish a factual basis for the charges in the Accusation and that those charges constitute cause
4 for discipline. Respondent hereby gives up his right to contest that cause for discipline exists
5 based on those charges.

6 10. Respondent understands that by signing this stipulation he enables the
7 Director to order accepting the surrender of his Land Surveyor license without further process.

8 **RESERVATION**

9 11. The admissions made by Respondent herein are only for the purposes of
10 this proceeding, or any other proceedings in which the Board or other professional licensing
11 agency is involved, and shall not be admissible in any other criminal or civil proceeding.

12 **CONTINGENCY**

13 12. The parties understand and agree that facsimile copies of this Stipulated
14 Surrender of License and Order, including facsimile signatures thereto, shall have the same force
15 and effect as the originals.

16 13. In consideration of the foregoing admissions and stipulations, the parties
17 agree that the Director may, without further notice or formal proceeding, issue and enter the
18 following Order:

19 **ORDER**

20 IT IS HEREBY ORDERED that Land Surveyor License No. L 4184, issued to
21 Respondent Clarence Morris Butler, is surrendered and accepted by the Board.

22 14. The surrender of Respondent's Land Surveyor license and the acceptance
23 of the surrendered license by the Board shall constitute the imposition of discipline against
24 Respondent. This stipulation constitutes a record of the discipline and shall become a part of
25 Respondent's license history with the Board.

26 15. Respondent shall lose all rights and privileges as a Licensed Land
27 Surveyor in California as of the effective date of the Director's Decision and Order.

28 16. Respondent shall cause to be delivered to the Board both his Land

1 Surveyor's wall and pocket license certificates on or before the effective date of the Decision and
2 Order.

3 17. Respondent understands and agrees that if he ever applies for licensure or
4 petitions for reinstatement in the State of California, the Board shall treat it as a new application
5 for licensure. Respondent must comply with all the laws, regulations and procedures for
6 licensure in effect at the time the application or petition is filed, and all of the charges and
7 allegations contained in Accusation No. 802-A shall be deemed to be true, correct and admitted
8 by Respondent when the Director determines whether to grant or deny the application or petition.

9 ACCEPTANCE

10 I have carefully read the Stipulated Surrender of License and Order. I understand
11 the stipulation and the effect it will have on my Land Surveyor's license. I enter into this
12 Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to
13 be bound by the Decision and Order of the Board.

14 DATED: 10/23/06

15 Original Signed
16 Clarence Morris Butler (Respondent)

17 ENDORSEMENT

18 The foregoing Stipulated Surrender of License and Order is hereby respectfully
19 submitted for consideration by the Board.

20 DATED: 10/24/06

21 BILL LOCKYER, Attorney General
22 of the State of California

23 MARGARET A. LAFKO
24 Supervising Deputy Attorney General

25 Original Signed
26 JAMES M. LEDAKIS
27 Deputy Attorney General
28 Attorneys for Complainant

Exhibit A

Accusation No. 802-A

1 BILL LOCKYER, Attorney General
of the State of California
2 JAMES M. LEDAKIS, State Bar No. 132645
Deputy Attorney General
3 California Department of Justice
110 West "A" Street, Suite 1100
4 San Diego, CA 92101

5 P.O. Box 85266
San Diego, CA 92186-5266
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7 Attorneys for Complainant
8

9 **BEFORE THE**
BOARD FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:) Case No. 802-A
13 CLARENCE MORRIS BUTLER)
6 Windjammer Court) **A C C U S A T I O N**
14 Long Beach, CA 90803)
15 Licensed Land Surveyor No. L 4184)
16 Respondent.)

17
18 Complainant alleges:

19 **PARTIES**

20 1. Cindi Christenson, P.E. (Complainant) brings this Accusation solely in her
21 official capacity as the Executive Officer for the Board for Professional Engineers and Land
22 Surveyors, Department of Consumer Affairs.

23 2. On or about June 12, 1974, the Board for Professional Engineers and Land
24 Surveyors issued Land Surveyor license no. L 4184 to Clarence Morris Butler. Said license will
25 expire on June 30, 2008 unless renewed.

26 **JURISDICTION**

27 3. This Accusation is brought before the Board for Professional Engineers
28 and Land Surveyors (Board), Department of Consumer Affairs, under the authority of the

1 following laws. All section references are to the Business and Professions Code unless otherwise
2 indicated.

3 4. Section 8780 of the Code states, in pertinent part:

4 The Board may reprove, suspend for a period not to exceed two years, or
5 revoke the license or certificate of any licensed land surveyor or registered civil engineer,
6 respectively, licensed under this chapter or registered under the provisions of Chapter 7
(commencing with Section 6700), whom it finds to be guilty of:

7 (a) Any fraud, deceit, or misrepresentation in his or her practice of land surveying.

8 (b) Any negligence or incompetence in his or her practice of land surveying.

9

10 (d) Any violation of any provision of this chapter or any other law relating
to or involving the practice of land surveying.

11

12 (f) Aiding or abetting any person in the violation of any provision of this
chapter.

13 (g) A breach or violation of a contract to provide land surveying services.

14 (h) A violation in the course of the practice of land surveying of a rule or
15 regulation of unprofessional conduct adopted by the board.

16 5. Section 6787 of the Code states, in pertinent part:

17 Every person is guilty of a misdemeanor:

18 (a) Who, unless he or she is exempt from registration under this chapter,
19 practices or offers to practice, civil, electrical, or mechanical engineering in this state according
to the provisions of this chapter without legal authorization.

20 6. Section 8759 of the Code states, in pertinent part:

21 (a) The written contract shall be executed by the licensed land
surveyor. . . .

22 7. Section 8792 of the Code states, in pertinent part:

23 Every person is guilty of a misdemeanor:

24

25 (i) Who, unless appropriately licensed, manages, or conducts as manager,
26 proprietor, or agent, any place of business from which land surveying work is solicited,
performed, or practiced. . . .

27 8. Section 411 of Title 16, California Code of Regulations states, in pertinent
28 part:

1
2 (f) Preprinting of blank forms with the seal or signature, the use of
3 decals of the seal or signature, or the use of a rubber stamp of the signature is prohibited.

4 9. Section 419 of Title 16, California Code of Regulations sets forth the
5 probationary terms, "For violations of Business and Professions Code sections 6775 and/or 8780
6 which result in an order issued in accordance with Chapters 4.5 and 5 of Part 1 of Division 3 of
7 Title 2 of the Government Code against a professional engineering and/or a professional land
8 surveying license."

9 10. Section 118, subdivision (b) of the Code provides that the
10 suspension/expiration/surrender/cancellation of a license shall not deprive the Board of
11 jurisdiction to proceed with a disciplinary action during the period within which the license may
12 be renewed, restored, reissued or reinstated.

13 11. Section 125.3 of the Code provides, in pertinent part, that the Board may
14 request the administrative law judge to direct a licentiate found to have committed a violation or
15 violations of the licensing act to pay a sum not to exceed the reasonable cost of the investigation
16 and enforcement of the case.

17 **Statement of Facts for Violations, Nos. 1-20; Board Reference 2005-09-188**

18 12. Respondent, Clarence Butler, a licensed land surveyor, prepared 20
19 different Records of Survey for 20 different residential development projects within the City of
20 Newport Beach, California; the preparation of each is a requirement for development as imposed
21 in the conditions of approval placed on each development by the City of Newport Beach.
22 Respondent submitted each of the 20 Records of Survey to the Orange County Surveyor's office
23 in the year 2004 for map review, but failed to comply with comments returned by the Orange
24 County Surveyor and resubmit each Record of Survey within the required 60 days. Respondent's
25 failure to resubmit the Records of Survey within the required 60 days caused the Orange County
26 Surveyor's office to issue reminder letters to Respondent; further an enforcement analyst for the
27 State of California Board for Professional Land Surveyors was required to make weekly reminder
28 calls to Respondent.

FIRST CAUSE FOR DISCIPLINE
(Professional Negligence and Incompetence)

13. Respondent is subject to disciplinary action under section 8780(b) for negligence or incompetence in his practice as set forth in paragraph 12 above.

Statement of Facts Occasion for Violation No. 21; Board Ref. 2003-09-236

14. In March 1999, the field work for a Topographic Survey for a single family residential project located at 805 Via Lido Nord, Newport Beach, was completed. Respondent signed the plan; thereafter, the property owner, the project architect, and the contractor relied on the information prepared by Respondent. Unfortunately, Respondent had incorrectly shown the property line dimension along Via Lido Nord as 79.41 feet instead of the dimension of 77.39 feet, this caused the project architect to prepare an incorrect set of building plans that later had to be corrected at the project architect's expense. On the Topographic Survey, Respondent had incorrectly shown the location of the public sidewalk along Via Waziers to be extending from the curb face to 4.5 feet behind the curb face. In reality, the property line was located an additional 2.5 feet beyond the back of the sidewalk. The project contractor relied on the accuracy of Respondent's Topographic Survey and constructed a new property line block wall directly behind the sidewalk. Based on Respondent's survey, the contractor assumed he was constructing the wall on private property. However, because of Respondent's incorrect survey, the wall was incorrectly located in the public right-of-way. The property owner and contractor were required to remove the wall and construct a new wall in the correct location.

SECOND CAUSE FOR DISCIPLINE
(Professional Negligence and Incompetence)

15. Respondent is subject to disciplinary action under section 8780(b) for negligence or incompetence in his practice as set forth in paragraph 14 above.

Statement of Facts for Violation Nos. 22-33, Board Reference No. 2004-08-249

16. In twelve instances, Respondent signed a "finished grade certification letter" for projects in the City of Newport Beach. For each project, a Registered Civil Engineer is required to prepare a project grading plan that determines the floor elevation of the buildings and the elevation of the ground and drainage pipes around the building to insure surface water is

1 carried from the project in an approved manner. Further, a certification is required to verify the
2 "as-constructed" condition by the project Registered Civil Engineer. Respondent signed these
3 documents as a land surveyor.

4 **THIRD CAUSE FOR DISCIPLINE**
5 (Unlicensed practice of Civil Engineering)

6 17. Respondent is subject to disciplinary action under section 6787(a) for
7 practicing civil engineering without legal authorization as set forth in paragraph 16 above.

8 **Statement of Facts for Violation Nos. 34-47; Board Reference No. 2004-08-249**

9 18. On fourteen separate occasions, Respondent affixed his signature or
10 allowed others to affix his signature through the use of a rubber stamp in plans required to be
11 signed by Respondent personally.

12 **FOURTH CAUSE FOR DISCIPLINE**
13 (Violation of the Rules of the Board)

14 19. Respondent is subject to disciplinary action under section 8780(h) for
15 violation of California Code of Regulations section 411(f) which prohibits the use of a rubber
16 stamp signature on certified documents as set forth in paragraph 18 above.

17 **FIFTH CAUSE FOR DISCIPLINE**
18 (Aiding and Abetting the Unlicensed Practice of Land Surveying)

19 20. Respondent is subject to disciplinary action under section 8780(f) for
20 aiding and abetting the unlicensed practice of land surveying as set forth in paragraph 18 above
21 by allowing others to use his rubber stamp signature on nine separate certified documents.

22 **Statement of Facts for Violation No. 48; Board Ref. 2004-08-249**

23 21. In completing a Topography Survey and proposed Parcel Map No. 2004-
24 276 for a project located at 3201 Clay Street, Newport Beach, California, Respondent signed a
25 copy of the Topography Survey on March 8, 2005, and submitted the Parcel Map for first plan
26 check to the City of Newport Beach on February 24, 2005. Respondent also prepared a revised
27 Topography Survey on April 13, 2005, and submitted copies of the revised Parcel Map on May 5,
28 2005. During his initial survey work and as shown on his Topography Survey or Parcel Map
2004-276, Respondent failed to identify and locate an existing property corner monument at the
northwest corner of proposed Parcel Map 2004-276. Respondent also failed to identify and

1 locate existing survey monuments at the two westerly corners of Lot 13, Block 7, Tract No. 27.
2 Nevertheless, after rejection by the City of Newport Beach, Respondent later added the requested
3 information. Respondent failed to locate and show four other survey monuments on the easterly
4 right-of-way line of Broad Street and one monument on the westerly right-of-way line of Clay
5 Street. Later, when rejected by the City of Newport Beach, Respondent added the information.
6 Further, respondent incorrectly placed the property boundaries. Respondent's incorrect
7 surveying resulted in his failure to note that the property line wall encroached by 10 inches onto
8 the subject property. Further, Respondent failed to note that the neighbor's garage wall, (along
9 the westerly property line) encroached by three inches onto the subject property. Only after the
10 City Surveyor of Newport Beach brought this to the attention of Respondent did Respondent
11 revise his survey.

12 **SIXTH CAUSE FOR DISCIPLINE**
13 (Professional Negligence and Incompetence)

14 22. Respondent is subject to disciplinary action under section 8780(b) for
15 negligence or incompetence in the practice of land surveying as set forth in paragraph 21 above.

16 **Statement of Facts for Violation No. 49; Board Ref. 2004-08-249**

17 23. In an interview on June 22, 2005 held by the State of California, Division
18 of Investigation, Respondent admitted that Ron Winterburn (unlicensed), President of Valley
19 Consultants, Inc., was the person on behalf of Valley Consultants, who speaks to clients in the
20 need of land surveying services. Respondent also admitted that Ron Winterburn prepares the
21 scope of services, negotiates related fees and contract provisions with clients, that Ron
22 Winterburn signs contracts on behalf of Valley Consultants and determines when tasks shown in
23 the scope of work are completed and when an invoice should be sent to the client. Respondent
24 admitted that Ron Winterburn answers technical questions posed by the Orange County
25 Surveyor's office or the City of Newport Beach Surveyor in his absence.

26 **SEVENTH CAUSE FOR DISCIPLINE**
27 (Aiding and Abetting the Unlicensed Practice of Land Surveying)

28 24. Respondent is subject to disciplinary action under section 8780(f), 8759
and 8792(i) for aiding and abetting in the unlicensed practice of Land Surveying by authorizing

1 Ron Winterburn to run the land surveying business as set forth in paragraph 23 above.

2 **Statement of Facts for Violation No 50; Board Ref. 2004-01-024**

3 25. On or about 2001, Respondent affixed his signature to Parcel Map No.
4 2000-139 as substitute land surveyor for James Kaviani. The parcel map was for a small
5 subdivision at 120-122 40th Street, Newport Beach, and eventually recorded in Book 324, pages
6 16-17 of Parcel Maps, records of Orange County. However, Respondent never made an attempt
7 to set his final survey monuments by the required date of December 31, 2001. Respondent
8 waited two years to set his survey monuments, and only after notification from the City Surveyor
9 of Newport Beach. Additionally, when Respondent did set his survey monuments, he set the
10 three front corner monuments on an off-set to the property corners, which requires the filing of a
11 Certificate of Correction. Respondent was notified by letter dated January 29, 2004 from the
12 Board for Professional Engineers and Land Surveyors that a Certificate of Correction was
13 required. Respondent continued to delay and refused to comply by completing a Certificate of
14 Correction, even after he was notified by letters dated March 11, 2004 and September 23, 2004,
15 from the Board.

16 **EIGHTH CAUSE FOR DISCIPLINE**
17 (Professional Negligence and Incompetence)

18 26. Respondent is subject to disciplinary action under section 8780(b) for
19 negligence or incompetence in the practice of land surveying as set forth in paragraph 25 above.

20 **Statement of Facts for Violation No. 51; Board Ref. 2005-03-046**

21 27. Respondent set four permanent survey monuments at Lot 7, Block
22 F, Tract No. 1219, Miscellaneous Maps, Book 38, pages 26-27, on Kings Road in Newport
23 Beach, California. Respondent failed to file a Corner Record or Record of Survey within 90 days
24 when permanent survey monuments were set in accordance with sections 8762(c) and 8765(d) of
25 the Business and Professions Code. On June 1, 2004, the Orange County Joint Professional
26 Practices Committee (JPPC) notified respondent that he needed to respond within 30 days.
27 Respondent did not respond to the JPPC's letter and due to no response, a second letter dated
28 August 16, 2004, was sent to Respondent. On February 16, 2005, the JPPC filed a complaint
with the Board for Professional Engineers and Land Surveyors.

1 **NINTH CAUSE FOR DISCIPLINE**
2 (Professional Negligence and Incompetence)

3 28. Respondent is subject to disciplinary action under section 8780(b) for
4 negligence or incompetence in the practice of land surveying by failing to file a Record of Survey
5 within 90 days after setting permanent survey monuments as set forth in paragraph 27 above.

6 **Statement of Facts for Violation No. 52; Board Ref. 2005-04-078**

7 29. With respect to a survey Respondent performed at a location between
8 Acacia Avenue and Begonia Avenue, Newport Beach, California, Respondent placed a spike and
9 washer with tag LS 4184 (Respondent's license number) at the intersection of First Avenue and
10 the alley between Acacia Avenue and Begonia Avenue, Newport Beach. However, Respondent
11 again failed to file a Record of Survey within 90 days of setting these monuments. The Orange
12 County Surveyor's office referred the matter to the Orange County Joint Professional Practices
13 Committee (JPPC) who sent a letter dated November 24, 2004 via certified mail requesting
14 Respondent explain why a Corner Record or Record of Survey was not filed within 90 days in
15 accordance with sections 8762(c) and 8765(d) of the Business and Professions Code. After
16 receiving no response from Respondent the JPPC sent a second letter dated February 12, 2005.
17 After receiving no response to the second letter, the JPPC sent a complaint dated April 18, 2005,
18 to the Board for Professional Engineers and Land Surveyors notifying them of Respondent's
19 failure to timely file a Record of Survey.

20 **TENTH CAUSE FOR DISCIPLINE**
21 (Professional Negligence and Incompetence)

22 30. Respondent is subject to disciplinary action under section 8780(b) for
23 negligence or incompetence in the practice of land surveying as set forth in paragraph 29 above
24 by failing to file a Record of Survey within 90 days of placing his monuments and refusing to
25 correct the situation when notified.

26 **Statement of Facts for Violation No. 53; Board Ref. 2005-11-251**

27 31. On or about August 25, 2004, Respondent prepared and submitted Corner
28 Record No. 2004-1724 for property on Orrington Road and Fairfield Drive in the City of
Newport Beach, (Lot 51, Tract No. 3357, Book 107, pages 1-7, Miscellaneous Maps, Orange

1 County) to the Orange County Surveyor's office. The Orange County Surveyor asked
2 Respondent to make revised corrections in a letter dated October 28, 2004. Further, Respondent
3 refused to respond to repeated requests by JPPC and the Board to resubmit the Corner Record to
4 the County Surveyor within 60 days of receiving comments in accordance with section
5 8773.2.(b) of the Business and Professions Code.

6 **ELEVENTH CAUSE FOR DISCIPLINE**
7 **(Professional Negligence and Incompetence)**

8 32. Respondent is subject to disciplinary action under section 8780(b) for
9 negligence or incompetence in the practice of land surveying as set forth in paragraph 31 above
10 for failing to timely file his Record of Survey and to make revisions as requested by the JPPC
11 within 60 days, as mandated.

12 **Statement of Facts for Violation No. 54; Board Ref. 2005-12-283**

13 33. On January 24, 2004, customer ML confirmed in writing to Ron
14 Winterburn of Valley Consultants that he was authorized to complete a Record of Survey for the
15 Rossi project at 1330 W. Bay, Newport Beach, for the cost of approximately \$2,000. Customer
16 ML wrote a second letter dated April 27, 2004 to Ron Winterburn confirming that Valley
17 Consultants would submit a Record of Survey to the County Surveyor either that day or the next.
18 Valley Consultants sent an invoice to ML dated January 1, 2005 for \$2,585 for the field work and
19 office drafting of the Record of Survey. In follow-up correspondence from ML to Winterburn
20 dated February 8, 2005 and February 21, 2005, ML agreed to pay the engineering fees when the
21 Record of Survey was completed. Respondent is Valley Consultants Inc.'s vice president.
22 Respondent neglected to file the record of survey as promised. Subsequently, On December 28,
23 2005, the Board's Enforcement Analyst requested in writing that Respondent respond by January
24 11, 2006. The Board's Enforcement Analyst contacted Respondent by phone on January 17,
25 2006 and requested a response to her letter; Respondent stated he would reply and he represented
26 to her that he set permanent survey monuments and he was working on the Record of Survey.
27 Respondent was required to have filed the Record of Survey. Respondent failed to file the
28 Record of Survey within 90 days of performing the survey in accordance with section 8762(c) of
the Business and Professions Code.

1 **TWELFTH CAUSE FOR DISCIPLINE**
2 (Professional Negligence and Incompetence)

3 34. Respondent is subject to disciplinary action under section 8780(b) for
4 negligence or incompetence in the practice of land surveying for failing to file a timely Record of
5 Survey and refusing to comply with repeated requests from the consumer and the Board as set
6 forth in paragraph 33 above.

7 **THIRTEENTH CAUSE FOR DISCIPLINE**
8 (Breach of Contract)

9 35. Respondent is subject to disciplinary action under section 8780(g) for
10 breach of contract in the practice of land surveying by failing to complete the surveying contract
11 as set forth in paragraph 33 above.

12 **Statement of Facts for Violation No. 55; Board Ref. 2005-12-284**

13 36. On or about May 2004, consumer MR retained Respondent to set
14 permanent property corners at his residence located in Yorba Linda, California. Respondent
15 failed to file a timely Record of Survey within 90 days of setting his monuments. Following a
16 consumer complaint, on December 25, 2005, the Board notified Respondent that a Record of
17 Survey was required. Respondent failed to file the Record of Survey within 90 days of
18 performing the survey in accordance with section 8762(c) of the Business and Professions Code.

19 **FOURTEENTH CAUSE FOR DISCIPLINE**
20 (Professional Negligence and Incompetence)

21 37. Respondent is subject to disciplinary action under section 8780(b) for
22 negligence or incompetence in the practice of land surveying for failing to file a Record of
23 Survey within 90 days of setting the monuments as set forth in paragraph 36 above.

24 **Statement of Facts for Violation No. 56; Board Ref. 2003-08-210**

25 38. Respondent prepared Parcel Map No. 2000-152 for a small subdivision at
26 412 and 412 ½ Acacia Avenue, Newport Beach, California. The Parcel Map was recorded
27 May 18, 2001, in Book 320, pages 45-46 of Parcel Maps, Orange County. The Surveyor's
28 Statement on the Parcel Map states the final survey monuments required on the map will be set
by March 2001. The City of Newport Beach Surveyor performed a field check on March 5, 2003
and did not find the property corner monuments that Respondent represented he set. Despite

1 what Respondent represented, the City Surveyor did not find sewer manhole covers at three
2 centerline intersections; rather, he found regular paving that would have allowed the setting of
3 survey monuments. Following his field check of Respondent's survey, the City Surveyor filed a
4 complaint with the Board for Professional Engineers and Land Surveyors. The Board's
5 independent expert reviewed the maps and the field conditions and found that the City Surveyor
6 was correct in stating there were no manhole covers at the three intersection points and the map
7 should have specified new survey monuments thereby confirming that the field conditions were
8 misrepresented by Respondent on the Parcel Map. The Board identified two pre-existing
9 property corner monuments at the corners of the subject property that confirm Respondent failed
10 to identify pre-existing survey monuments. However, Respondent represented to the Board that
11 the survey corners were set when in fact he failed to note them.

12 **FIFTEENTH CAUSE FOR DISCIPLINE**
13 (Professional Negligence and Incompetence)

14 39. Respondent is subject to disciplinary action under section 8780(b) for
15 negligence or incompetence in the practice of land surveying for representing he set survey
16 corners (when he did not), and his failing to identify pre-existing monuments during his survey,
17 as set forth in paragraph 38 above.

18 **SIXTEENTH CAUSE FOR DISCIPLINE**
19 (Deceit or Misrepresentation)

20 40. Respondent is subject to disciplinary action under section 8780(a) for
21 deceit or misrepresentation in the practice of land surveying for representing that he properly set
22 the monuments when he failed to do so as set forth in paragraph 38 above.

23 **Statement of Facts for Violation No. 57; Board Ref. 2005-07-155**

24 41. With respect to a project located at 2200 Waterfront Drive, Respondent
25 submitted Parcel Map 2004-110 to the Orange County Surveyor's office for four plan checks
26 which resulted in a "favorable letter" from the County Surveyor. Said letter signifies the
27 boundary information shown on the map has been accepted and the surveyor may begin the
28 recording process. Respondent then submitted the map originals to the City Surveyor for
approval and signature. The City of Newport Beach Surveyor performs routine field checks on

1 all maps prepared in the City, as opposed to the Orange County Surveyor, who does not perform
2 field checks but relies on the standards and ethics of the surveyors and engineers preparing maps.
3 The City Surveyor performed his field check and found four centerline intersection monuments
4 and 10 property corner monuments that were incorrectly located by Respondent. Thereafter, the
5 City filed a complaint with the Board. On July 27, 2005, the Board notified Respondent by letter
6 of the discrepancies. After an investigation, the Board found 17 discrepancies confirming the
7 City Surveyor's conclusion that Respondent's Parcel Map was copied from other maps and
8 records. The Board determined that two of the seventeen monument points were never set as
9 reported and claimed by Respondent in his Parcel Map.

10 **SEVENTEENTH CAUSE FOR DISCIPLINE**
11 (Professional Negligence and Incompetence)

12 42. Respondent is subject to disciplinary action under section 8780(b) for
13 negligence or incompetence in the practice of land surveying for 17 discrepancies noted in his
14 parcel map as set forth in paragraph 41 above.

15 **EIGHTEENTH CAUSE FOR DISCIPLINE**
16 (Deceit and Misrepresentation)

17 43. Respondent is subject to disciplinary action under section 8780(a) for
18 deceit or misrepresentation in the practice of land surveying for representing that he found two
19 monument points when in fact they did not exist as set forth in paragraph 41 above.

20 **Statement of Facts for Violation Nos. 58-62; Board Ref. Nos. 2003-08-201,**
21 **204, 206, 207, 208**

22 44. In five Parcel Maps identified as Parcel Map Nos. 98-129, 99-105, 99-
23 156, 99-177, and 99-201, James Kaviani was the signer of the Parcel Map and was responsible
24 for setting, or having someone set, his own survey monuments. Kaviani was severely injured in
25 October 2000, so Respondent represented that he set Kaviani's survey monuments as required on
26 the maps. However, following an investigation, the Board determined that in all five maps, there
27 were pre-existing survey monuments at the corners of the properties being surveyed. The Board
28 determined that these monuments pre-existed Respondent's or Valley Consultants Parcel Maps.
The Certificates of Correction for setting Kaviani's monuments on offsets were signed by

Respondent and contain false statements representing that these pre-existing monuments were set after Valley Consultants performed their initial surveys.

NINETEENTH CAUSE FOR DISCIPLINE
(Professional Negligence and Incompetence)

45. Respondent is subject to disciplinary action under section 8780(b) for negligence or incompetence in the practice of land surveying using pre-existing survey monuments and claiming they were set after Respondent completed his survey as set forth in paragraph 44 above.

TWENTIETH CAUSE FOR DISCIPLINE
(Deceit or Misrepresentation)

46. Respondent is subject to disciplinary action under section 8780(a) for deceit or misrepresentation in the practice of land surveying providing false statements as set forth in paragraph 44 above.

Statement of Facts for Violation Nos. 63-65; Board Ref. 2003-08-202, 203, 205, 209

47. Respondent was responsible for setting the final survey corners of four parcel maps identified as Parcel Map Nos. 98-176, 98-256, 99-122, and 2000-149. In the first three Parcel Maps, Respondent set the monuments at offsets which requires a Certificate of Correction to be filed. The three Certificates of Correction were signed by Respondent and include language that the survey monuments were previously set but knocked out by construction that occurred on the property. After an investigation, the Board determined that Respondent failed to identify nearby monuments that were not shown on his maps but pre-existed the Valley Consultants initial survey.

TWENTY-FIRST CAUSE FOR DISCIPLINE
(Professional Negligence and Incompetence)

48. Respondent is subject to disciplinary action under section 8780(b) for negligence or incompetence in the practice of land surveying as set forth in paragraph 47 above.

TWENTY-SECOND CAUSE FOR DISCIPLINE
(Deceit or Misrepresentation)

49. Respondent is subject to disciplinary action under section 8780(a) for deceit or misrepresentation in the practice of land surveying by representing that construction

1 knocked out his survey monuments when in fact he never set the monuments as required and set
2 forth in paragraph 47 above.

3 **PRAYER**

4 WHEREFORE, Complainant requests that a hearing be held on the matters herein
5 alleged, and that following the hearing, the Board for Professional Engineers and Land Surveyors
6 issue a decision:

7 1. Revoking or suspending Licensed Land Surveyor No. L 4184, issued to
8 Clarence Morris Butler.

9 2. Ordering Clarence Morris Butler to pay the Board for Professional
10 Engineers and Land Surveyors the reasonable costs of the investigation and enforcement of this
11 case, pursuant to Business and Professions Code section 125.3.

12 3. Taking such other and further action as deemed necessary and proper.

13
14 DATED: 9/19/06

15
16 Original Signed

17 Cindi Christensen, P.E.
18 Board for Professional Engineers and Land Surveyors
19 Department of Consumer Affairs
20 State of California
21 Complainant

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23 JML:kc
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